

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

ANTHONY LAWHORN,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:23-CV-206
(GROH)**

**CORRECTIONAL OFFICER PATRICK MAYLE
NURSE JANE DOE, and
NURSE JOHN DOE,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 11. Pursuant to the Local Rules, this civil action was referred to Judge Trumble for submission of a proposed R&R. Judge Trumble issued an R&R on May 7, 2024, recommending the Defendant’s Partial Motion to Dismiss [ECF No. 2] be granted. Id. at 12. Specifically, Magistrate Judge Trumble recommends (1) dismissing without prejudice the Plaintiff’s deliberate indifference or failure to provide medical care claim contained within Count One based on the parties’ agreement¹ and (2) permitting all other claims to proceed in normal course. Id.

¹ The Court notes here that while the Defendant’s Motion requests dismissal *with* prejudice, the Plaintiff’s response filed thereafter proffers that counsel for both parties conferred and now agree the relevant claim should be dismissed *without* prejudice. Compare ECF No. 2 with ECF No. 6 at 3. Based on Plaintiff’s counsel’s representation, along with the Defendant having contested neither the representation nor the R&R’s recommendation of the same, this Court finds dismissal without prejudice is the relief both sought by the Defendant’s Motion and agreed to by the parties.

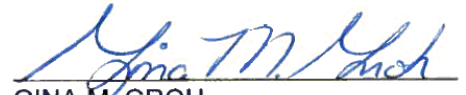
Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Because the Plaintiff is represented by counsel, objections to Magistrate Judge Trumble's R&R were due within fourteen days of the R&R being filed on the docket. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see also LR Gen P 5.06(b), (g). The R&R was filed on the docket on May 7, 2024. ECF No. 11. As of the date of this Order, no objections have been filed. Therefore, the Court finds that the deadline to submit objections to the R&R has passed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 11] should be, and is hereby, **ORDERED ADOPTED**. For the reasons more fully stated in the R&R, the Defendant's Partial Motion to Dismiss [ECF No. 2] is **GRANTED**. Accordingly, the deliberate indifference or failure to provide medical care claim contained within Count One is **DISMISSED WITHOUT PREJUDICE**. All other claims **SHALL PROCEED** in normal course.

The Clerk of Court **DIRECTED** to transmit a copy of this Order to all counsel of record herein.

DATED: July 15, 2024


GINA M. GROH
UNITED STATES DISTRICT JUDGE